

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER THOMAS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HAROLD GENE THOMAS,

Respondent-Appellant,

and

LISA DAWN RECORE and ANTHONY AYERS,

Respondents.

UNPUBLISHED
February 23, 2010

No. 294847
Hillsdale Circuit Court
Family Division
LC No. 07-000074-NA

Before: Fitzgerald, P.J., Cavanagh and Davis, JJ

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court's order terminating his parental rights to his minor child. We affirm.

The trial court found that termination was warranted under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (failure to rectify other conditions that warrant the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (child will likely be harmed if returned), and that termination was in the child's best interests. An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 3.977(J). Discretionary rulings are reviewed for a "palpable abuse of discretion." MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994)

The evidence showed that respondent-appellant had a long history of substance abuse, some of which involved cocaine, and that despite participating in, and even completing, several treatment programs, he always relapsed. Indeed, during the only short period where the child was entrusted to him, respondent-appellant relapsed and the child was removed. The failure to rectify a substance-abuse problem is a valid basis to terminate parental rights. See *In re Conley*,

216 Mich App 41, 44; 549 NW2d 353 (1996). Further, respondent-appellant's history also includes several serious incidents of domestic violence. Moreover, respondent-appellant's penchant for illegal drugs and domestic violence, among other things, has resulted in several terms of incarceration in prison or jail. For these reasons, the trial court did not clearly err in concluding that the statutory criteria for termination were satisfied.

Concerning the child's best interests, respondent-appellant argues that the trial court should have appointed a guardian for the child, as an alternative to termination, in order to preserve the father-son relationship. See MCL 712a.19(7)(c)(7)(c). However, respondent-appellant nowhere suggests that he urged this course of action upon the trial court below, and his own trial court memorandum concerning best interests made no mention of the possibility of a guardianship. Further, when the foster care worker was asked if permanency would be provided if a guardianship were ordered, she answered most emphatically in the negative.

In light of this record, the trial court neither abused its discretion in declining to prolong this case indefinitely by taking the initiative to appoint a guardian, nor clearly erred in concluding that termination was in the child's best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis